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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE R. GUMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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INDEX

PAGE

Introduction 1

I—Respondent's analysis of Section 2283, its legislative history, and the relevant decisions, is erroneous 3

II—There is no merit in respondent's contention that petitioners could not seek federal equitable relief after the state court refused to acknowledge that the state court proceeding invaded an exclusively federal domain 8

Table of Cases Cited

American Surety Co. v. *Baldwin*, 287 U. S. 156 . . 10, 10n, 11

Bowles v. *Willingham*, 321 U. S. 503 ..... 2, 3, 4

Capital Service, Inc. v. *Labor Board*, 347 U. S. 501 . . 2n, 6, 8

Collett, Ex parte, 337 U. S. 55 5

Davega-City Radio, Inc. v. *Boland*, 23 F. Supp. 969 (S. D. N. Y.) 12n

Garner v. *Teamsters, C. & H. Loc. Union 776*, 346 U. S. 485 6

General Exporting Co. v. *Star Transfer Line*, 136 F. 2nd 329 (C. A. 6) 11n, 12n

Graham v. *Brotherhood of Firemen*, 338 U. S. 232 ... 2n

H. J. Heinz Co. v. *Owens*, 189 F. 2nd 505 (C. A. 9), quoted in *International Union* v. *William D. Baker Co.*, 100 F. Supp. 773 (E. D. Pa.) 10n, 12n

International Union v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2) 2n, 8

PAGE

Josephson, In re (C. A. 1, No. 4854 Original, December 23, 1954) (not yet officially reported) p. 13 .. 7

Labor Board v. *Pittsburgh S. S. Co.*, 337 U. S. 656 .. 2n

National Labor Rel. Bd. v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749 (S. D. N. Y.) 9, 12n

Toucey v. *New York Life Ins. Co.*, 314 U. S. 118...4, 5, 5n

United Electrical R. & M. W. v. *Westinghouse El. Corp.*, 65 F. Supp. 420 (E. D. Pa.) 10n, 11n

Woods v. *Interstate Realty Co.*, 337 U. S. 535 4

Other Authorities Cited

H. Rep. No. 308, 80th Cong., 1st Sess., A181-A182 (Reviser's Notes on Section 2283) 5

Judicial Code of 1911, Section 265, 36 Stat. 1162, 28 U. S. C. 379 (1940 ed.) 4

Melvin, *The Use of Injunctions in Labor Disputes*, 36 A. B. A. J. 1007 (1950) 2n

National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. Supp V, 151) 6

Section 10(j) 7

Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101). 2n

Title 28 U. S. Code:

Section 1337 .....2n, 6

Section 1404(a) 5n

Section 2283 .....2, 3, 4, 5, 5n, 6, 7, 8

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THE RICHMAN BROTHERS COMPANY,

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REPLY BRIEF FOR PETITIONERS

Introduction

Petitioners submit this Reply Brief for the purpose of showing the insubstantiality of respondent's contention, not considered by either of the courts below, that petitioners foreclosed themselves from seeking federal equitable relief by vainly asking the state court to take cognizance of its lack of jurisdiction. By way of preliminary matter, however, this Reply Brief addresses itself to certain arguments made by respondent in support of its contention that Section 2283 of the Judicial Code is applicable to, and pre-

cludes the maintenance of, the instant proceeding. The issues relating to Section 2283 may have become obscured by virtue of respondent's apparent failure to apprehend (a) the precise arguments urged by petitioners, (b) the plain meaning of this Court's opinion in *Bowles* v. *Willingham*, 321 U. S. 503, and (c) the manifest intent of the Congress which adopted the 1948 revision of the Judicial Code. Petitioners have sought, therefore, to redraw, in broad contour, certain of the principal issues and contentions relating to Section 2283 so as to facilitate this Court's consideration of the underlying questions. It only remains to be added that petitioners concur in the arguments contained in the Brief filed by the National Labor Relations Board as *amicus curiae*.[1]

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[1] With respect to the suggestion referred to in *International Union* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2), and adverted to in the Board's Brief (p. 25, n. 18) that the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101, *et seq.*) might conceivably have some relevance to a case of this kind, petitioners have only brief comment to add to the Board's conclusion that the suggestion is without foundation. If there were to be enough substance in the notion to make it worthy of consideration, this Court would not normally pass upon it at this stage, since it has not been treated here (in fact, it has still not been raised by respondent) and has not been considered by or even presented to either of the courts below. *Labor Board* v. *Pittsburgh S. S. Co.*, 337 U. S. 656, 661-662; *Graham* v. *Brotherhood of Firemen*, 338 U. S. 232, 237. But, as the Board has already stated, the Norris-LaGuardia Act has no relevance to the issues in this case. "The Norris-LaGuardia Act of 1932 was aimed at removing the labor injunction that had been used for more than fifty years to deter union organization." Melvin, *The Use of Injunctions in Labor Disputes*, 36 A. B. A. J. 1007 (1950). To make Norris-LaGuardia a bar to federal restraint upon an unlawful proceeding seeking to enjoin organizational picketing "would indeed be to 'turn the blade inward'." *Graham* v. *Brotherhood of Firemen*, *supra*, at 237. In any event, the grant of injunctive relief in *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, would seem wholly dispositive of the suggestion. (As noted below, jurisdiction there was asserted on the basis of Section 1337 rather than the National Labor Relations Act;

I

Respondent's analysis of Section 2283, its legislative history, and the relevant decisions, is erroneous.

(a) Adequate answer to the arguments advanced in Respondent's Brief urging the applicability of Section 2283 to a case involving state court encroachment upon the exclusive jurisdiction of the National Labor Relations Board and federal courts is to be found in both the Board's and Petitioners' Briefs (Bd. Br., pp. 18-22; Pet. Br., pp. 28-33). Therefore, it would serve no useful purpose to restate these arguments. It should be noted, however, that respondent seeks to avoid the full impact of this Court's decision in *Bowles* v. *Willingham*, 321 U. S. 503, by attempting to fuse this Court's alternative and independent holdings into a single holding combining features from both (Resp. Br., pp. 11-16). The language of *Bowles* v. *Willingham* is too plain to be so obscured. As heretofore stated in both the Board's and Petitioners' Briefs (Pet. Br., pp. 29-31; Bd. Br., pp. 18-21), *Bowles* v. *Willingham* rests on the following two separate and independent grounds:

> *First*, since "Congress . . . preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts," the "rule expressed in § 265 which is designed to avoid collisions between state and federal authorities . . . thus does not come into play" (321 U. S. at 511);

therefore, the saving provision contained in the National Labor Relations Act with reference to the inapplicability of the Norris-LaGuardia Act did not come into play.)

> *Second*, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, the latter section constituted an implied legislative amendment to Section 265.

It is elementary that "where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*." *Woods* v. *Interstate Realty Co.*, 337 U. S. 535, 537.

Respondent further seeks to avoid this Court's holding in *Bowles* v. *Willingham* by contending that "Even if the concept that the prohibition of Section 265 did not come into play where there was present an exclusive federal jurisdiction, were to be accepted as an established legal principle with reference to the application of Section 265, there is no basis for accepting a corresponding concept in connection with the application of Section 2283" (Resp. Br., p. 14).

Acceptance of this contention would mean that Congress, in replacing Section 265 with Section 2283 had elected to confine federal injunctions against state court proceedings to even narrower limits than those drawn in the *Toucey* opinion. Actually, as the Reviser's Notes show, the dominant purpose of this aspect of the 1948 revision was precisely to the contrary. It was plainly understood that "the revised section restores the basic law as generally understood and interpreted prior to the Toucy [*sic*] decision."

(H. Rep. No. 308, 80th Cong., 1st Sess., A182; quoted in full in Pet. Br., pp. 49-50.)[2]

(b) Similarly respondent contends that the "statutory qualifications" of Section 265 recognized in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 132-134, and subsequent decisions do not fall within the first exception of Section 2283 (Resp. Br., pp. 18-21). This argument cannot stand in the face of the legislative history of Section 2283 as reflected in the excerpt from the Reviser's Notes quoted above. Indeed, the Reviser's Notes explicitly record, with reference to the first exception, that, "An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions" (H. Rep. No. 308, 80th Cong., 1st Sess., A181).

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[2] Respondent apparently relies upon the language from *Ex parte Collett*, 337 U. S. 55, quoted in its brief (pp. 10-11), as authority for the proposition that no consideration should be given to . . . Reviser's Notes on Section 2283, the legislative history adduced by petitioners to show that Section 2283 was designed to narrow the limitation on federal equity power embodied in Section 265 as that section was construed in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118. *Ex parte Collett* is a most insubstantial basis for any argument aimed at discrediting the Reviser's Notes. That decision demonstrates, as noted in the Board's Brief (p. 22, n. 16), that this Court accords great weight to the Notes because of the important role which they played in the legislative consideration of the Judicial Code of 1948. In the *Collett* case, the Court was called upon to construe Section 1404(a) of the Judicial Code. After setting forth the proviso in question, the Court's opinion quotes the full text of the Reviser's Notes on Section 1404(a) and then states that the issue is "whether, despite these expressions, the law remains unchanged" (337 U. S. at 57-58). Noting that the full text of the Reviser's Notes had been printed for Congressional use both in 1946 and 1947 (337 U. S. at 69-70), this Court concluded that the revised section meant what the Reviser's Notes said it meant, and that the law had, in fact, been changed.

In addition, respondent contends that, even if the National Labor Relations Act were a statute within the first exception to Section 2283, the authority to enjoin competing state court action lies solely with the National Labor Relations Board because of "express provisions of the . . . Act vesting the Board with exclusive initial jurisdiction as to all matters covered by its terms" (Resp. Br., p. 19). The exclusive character of the Board's jurisdiction within the confines of the National Labor Relations Act is, of course, beyond proper challenge. But exclusive jurisdiction to carry out the statutory functions entrusted to the Board under the National Labor Relations Act is not the equivalent of exclusive jurisdiction to challenge usurpation by state courts or state administrative tribunal of this exclusive domain. The kind of action here involved is not one of the "matters covered by [the Labor Act's] terms." That the Board is not possessed of "exclusive initial jurisdiction" to challenge state court invasion of the federally preempted field is plain from the fact that a private litigant may successfully challenge such an invasion in a state court proceeding. *Garner* v. *Teamsters Union*, 346 U. S. 485.

In sum, the answer to respondent's contention is that when the Board seeks to enjoin state court proceedings as an encroachment upon its exclusive domain, it must ground its application upon Section 1337, rather than upon the National Labor Relations Act, as the basis of district court jurisdiction. *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501. Section 1337, which in no way differentiates between actions brought by federal agencies and pri-

vate litigants, is likewise the jurisdictional basis for petitioners' instant action.

(c) Respondent has wholly failed to come to grips with petitioners' argument respecting the second exception to Section 2283. It is contended by petitioners that, in terms of the second exception, the district court jurisdiction which the injunction would aid is the jurisdiction conferred on the federal district court by Section 10(j) of the National Labor Relations Act and that such jurisdiction warrants aid even though neither the Board's jurisdiction nor the federal court's jurisdiction under Section 10(j) has first been invoked. It is urged that the order of the state court denying Amalgamated's motion to dismiss for lack of jurisdiction marked the ripening of the threat to the *potential* jurisdiction of the District Court and, as such, was the proper object of federal restraint. The injunction sought by Amalgamated from the District Court was, therefore, "necessary in aid of its jurisdiction".

The point is plainly illustrated by the language of the Court of Appeals for the First Circuit, invoking the "all writs" section to examine into an otherwise unreviewable order: "Assuming, as petitioner asserts, the invalidity of the order . . . the effect of the order is [to put beyond reach] a case which could eventually come to this court . . .. Therefore we have no doubt that we have power under 28 U. S. C. Section 1651(a), in aid and protection of our potential . . . jurisdiction, to review the order . . .". *In re Josephson* (C. A. 1, No. 4854 Original, December 23, 1954, p. 13; not yet officially reported).

This argument is at no point met by Respondent's Brief.

But if this Court holds that Section 2283 bars the instant action, then, notwithstanding the views expressed in *International Union* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2), the Board will also be unable to secure injunctions against invalid state court proceedings, except in the fortuitous and seldom-to-be repeated circumstance that an employer simultaneously invokes the processes of the Board and the state court. *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501. For the limitation embodied in Section 2283, like the jurisdiction conferred by Section 1337, if applicable at all, applies without differentiation to private litigants and to the Board. If Section 2283 is a restraint upon petitioners, it is a restraint upon the Board. Affirmance of the conclusion that the District Court was powerless to grant petitioners relief would mean that state court invasions of the federal domain are not subject to effective restraint from any quarter.

II

There is no merit in respondent's contention that petitioners could not seek federal equitable relief after the state court refused to acknowledge that the state court proceeding invaded an exclusively federal domain.

Respondent contends that petitioners foreswore the right to federal equitable relief by moving to dismiss respondent's action in the state court. But, as will

be shown below, the principal authorities cited to support this proposition are cases in which the federal plaintiff had, in effect, elected to litigate in a state court possessed of jurisdiction over the subject matter. It does not follow that a litigant, who is an unwilling defendant in a state court lacking jurisdiction of the subject matter, must decline to assert in the state court the invalidity of that proceeding as the price of admission to the federal courts. In fact, until the state court has first been challenged and has chosen to disregard the limits upon its jurisdiction, it is questionable as to whether the state court defendant can reasonably assert such injury or threat thereof as would warrant federal equitable intervention.[3] Had the state court properly noted its jurisdictional limits and granted petitioners' motion to dismiss for lack of jurisdiction, the instant case would never have arisen. But once the motion was denied—once the state court made this threshold determination and announced its disregard of the limits on state power—there was no further basis for continuation of the assumption that the state court will refrain from trespass upon the federal domain. When petitioners turned for relief to the federal court, the federal judge could no longer properly inquire what justification there was for assuming "that a state court will act without regard to the ap-

[3] See *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 753 (S. D. N. Y.), wherein it was held that there was no justiciable question as to conflict between state and federal labor relations boards since "the intention of the State Board to determine whether it has jurisdiction does not present any threat to the jurisdiction of the National Board".

plicable law"[4] or "will not respect any controlling limitations upon its power".[5]

The complete inapplicability of the cases relied on by respondent is best illustrated by the first of the citations—the only one of the cited cases decided by this Court—*American Surety Co.* v. *Baldwin*, 287 U. S. 156.

First, the *Baldwin* case was not a preemption case. It was an ordinary negligence action properly tried in the courts of Idaho. The single federal question arose when judgment was entered against petitioner, as guarantor of one of the two defendants, allegedly without notice to petitioner. Petitioner then moved the state court to set aside its allegedly void judgment, but, after the motion was granted, the Idaho Supreme Court reversed on the ground that petitioner should have appealed from the allegedly void judgment rather than moving to vacate it. Petitioner raised its federal question for the first time on petition for rehearing, which was denied. Petitioner then sought federal equitable relief from the judgment, and this Court held on certiorari that petitioner had forfeited its right to a federal injunction by electing to litigate in the state courts which had "jurisdiction over the parties and of the subject matter" and where "an adequate state remedy was available" (287 U. S. at 165).[6]

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[4] *United Electrical R. & M. W.* v. *Westinghouse El. Corp.*, 65 F. Supp. 420, 423 (E. D. Pa.), quoted at page 31 of Respondent's Brief.

[5] *H. J. Heinz Co.* v. *Owens*, 189 F. 2nd 505, 509 (C. A. 9), quoted in *International Union* v. *William D. Baker Co.*, 100 F. Supp. 773, 777 (E. D. Pa.), quoted at page 31 of Respondent's Brief.

[6] Petitioner in *American Surety Co.* v. *Baldwin* also sought certiorari from the state supreme court's denial of rehearing, but the federal question had not been seasonably raised.

Plainly, the decision in *American Surety Co.* v. *Gaskin* is not relevant to the instant litigation. Here petitioners did not pursue an independent state court remedy and then, failing their object in that forum, seek to circumvent further state proceedings by beginning anew in the federal courts. Petitioners, here, without delay or equivocation, announced that the state court was without jurisdiction and seized their first opportunity to persuade the state court to halt its incursion upon the exclusive federal domain. Thereupon, when the state court refused appropriately to delimit its jurisdiction, federal equitable intervention was both necessary and appropriate.[7]

Respectfully submitted.

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March 3, 1955.

[7] It is submitted that the other cases relied on by respondent are also without present relevance:

General Exporting Co. v. *Star Transfer Line*, 136 F. 2nd 329 (C. A. 6) and *United Electrical R. & M. W.* v. *Westinghouse El. Corp.*, 65 F. Supp. 420 (E. D. Pa.), were cases in which the federal courts expressly rejected contentions that federal jurisdiction was exclusive. Moreover, in *General Exporting Co.* v. *Star Transfer*, the "suit had proceeded to pronouncement of judgment